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The Legal Implications of Health Care Cost Containment: A Symposium - Introduction

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INTRODUCTION

*Ernest Gellhorn**

INTERDISCIPLINARY SCHOLARSHIP is frequently held out as both a necessity and hope for solving complex health care issues. Too often, however, this promise is unfulfilled; there are in fact few forums in which health care experts can present ideas, challenge proposed solutions or discuss alternative strategies. The natural tendency is to talk with others in one's discipline or, even more, within a narrow specialty, where information can be readily exchanged with one's peers and recognition quickly achieved.

The Law-Medicine Center at the Case Western Reserve University School of Law has long provided a place for students to study relationships between law and medicine. It has concentrated mainly on legal understanding of scientific fact. The aim was generally to strengthen legal decisionmaking, primarily in the courts. A major educational effort was also made by Professor Oliver C. Schroeder, Jr., the Center's founder, to increase understanding of legal questions by physicians and medical scientists as he lectured to classes of medical students and doctors throughout the country.

The Center is expanding its horizons by examining discrete topics now facing health care providers. One such issue is the program developed by the Center's new director, Professor Maxwell J. Mehlman, to review recent measures designed to contain health care costs. The cost of health care has continued to escalate even after inflationary pressures subsided elsewhere in the economy. The purpose of the papers presented here, initially delivered at a conference on health care cost containment which was held at the Law School in April 1986, is to share major insights from legal scholarship with

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health care specialists and policymakers both within and without the legal profession. The eight major presentations are criticized by leading experts in health care, in most cases non-lawyers. The principal papers and comments published here reflect the intensive interchange during the conference.

While these papers explore in fascinating detail various constraints and pressures from cost containment in health care, they by no means are a comprehensive review. Broad coverage was deliberately sacrificed in favor of in-depth analysis and concrete responses to specific problems. If anything, the papers and comments reinforce the understanding that a search for an answer or single solution is fruitless. Insights on how the health care market operates and the contending views of whether regulation—by government, hospitals, doctors, or insurance companies—can be effective are critical. If we are to rely on market mechanisms, it is important to understand how physicians and their patients receive information and make decisions, especially in light of rapidly changing technology.

In organizing this conference, Professor Mehlman recognized that the problems of health care cannot be separated from other parts of society. Modern health care is expensive and is subject to strong fiscal and political forces attempting to decide where to allocate society's scarce resources. The conference papers reviewed these issues from a variety of perspectives. One paper and series of comments, for example, asked whether waste could be limited without impairing patient care; the answer is based in part on the efficacy of technology assessment. Another asked whether sufficient resources were being devoted to health care and whether current payment systems such as Medicaid were properly structured.

The concern at all times was how to manage limited resources in a way to assure the most effective health care delivery system. This was understood to mean both efficient service that seeks the best quality at the lowest cost and a compassionate understanding of the effects of specific cost controls on special cases, such as the poor, the elderly, and care for infants and children.

Few questioned these values though others would state them differently. The differences arose over which strategies would achieve the most desired results in keeping costs controlled while obtaining the maximum advantage from medical science. The basic question of whether less regulation and greater reliance on market pressures—the primary direction of recent years—was the preferred route was a continuing debate. Despite strongly held views, little

consensus emerged. This was neither surprising nor disappointing: scholarship is designed to inform, not decide. It is only through greater and deeper understanding that careful judgments can be made. The papers published here are an important part of that process.

One final observation is worth noting. It is perhaps the obvious point that a major benefit of this conference is the understanding and respect generated between disparate disciplines—law and medicine. Each reflects distinctive approaches and different training and perspectives. Even the most thoughtful comments and papers were improved by critiques from another discipline. We have, in other words, much to learn from each other.